

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KIYOSHI RICARDO HILL,

Defendant.

Case No.: 2:13-cr-00012-GMN-PAL

ORDER

Pending before the Court is Defendant Kiyoshi Ricardo Hill's ("Defendant's") Motion for Compassionate Release, which he filed *pro se*, (ECF No. 31). Pursuant to this Court's General Order, the Federal Public Defender's Office ("FPD") filed a Supplement to Defendant's Motion, (ECF No. 33). The Government filed a Response, explaining that it did not take a position regarding the Motions, (ECF No. 35). For the reasons discussed below, the Court **DENIES** the Motions.

I. BACKGROUND

On November 14, 2013, Defendant pleaded guilty to two counts of Felon in Possession of a Firearm. (*See* First Superseding Indictment, ECF No. 14); (Mins. Proceedings, ECF No. 28). The Court sentenced Defendant to seventy (70) months custody, followed by three years of supervised release. (*See* Judgment, ECF No. 30). Defendant, with fewer than six months remaining prior to his release from confinement, is being housed at the Nevada Southern Detention Center in Pahrump until he is transferred to another, currently undesignated, Bureau of Prisons ("BOP") facility. (Supp. Mot. 2:1-8, ECF No. 33). On April 28, 2020, Defendant, without counsel, filed the Motion requesting compassionate release under the First Step Act. (*See* Mot. Compassionate Release, ECF No. 31). Pursuant to this Court's General Order, the

1 FPD filed a Supplemental Motion, clarifying that Defendant seeks a judicial recommendation
 2 to the BOP that Defendant be allowed to serve the remainder of his carceral sentence in home
 3 confinement pursuant to 18 U.S.C. § 3621, the Second Chance Act, the First Step Act, and the
 4 CARES Act. (*See* Supp. Mot. 1:18–23, 2:17–3:21, ECF No. 33).

5 **II. LEGAL STANDARD**

6 “The Bureau of Prisons has the statutory authority to choose the locations where
 7 prisoners serve their sentence.” *United States v. Ceballos*, 671 F.3d 852, 855 (9th Cir. 2011).

8 When assessing where to house a prisoner, the BOP may consider, among other factors:

- 9 (4) any statement by the court that imposed the sentence—
- 10 (A) concerning the purposes for which the sentence to imprisonment was
- 11 (B) recommending a type of penal or correctional facility as appropriate.

12 *Id.*; 18 U.S.C. § 3621(b). A district court’s recommendation to the BOP is non-binding. *See* 18
 13 U.S.C. § 3621(b). The court may make such a facility recommendation to the BOP at any time.
 14 *Ceballos*, 671 F.3d at 856 n.2; *United States v. Hoffman*, No. 2:15-cr-00234-JAM-1, 2018 U.S.
 15 Dist. LEXIS 213936, 2018 WL 6634378, at *1 (E.D. Cal. Dec. 19, 2018).

16 Under the Second Chance Act, the BOP may consider placing prisoners who are nearing
 17 the end of their sentences in conditions “that will afford [the prisoners] a reasonable
 18 opportunity to adjust to and prepare for [their] reentry . . . into the community.” *See* 18 U.S.C. §
 19 3624(c)(1). This allows the BOP to place prisoners “with lower risk levels and lower needs” in
 20 home confinement for the final ten percent or six months of the prisoner’s sentence, whichever
 21 is shorter. 18 U.S.C. § 3624(c)(2). Additionally, the CARES Act “authorizes [the Attorney
 22 General] to expand the cohort of inmates who can be considered for home release upon finding
 23 that emergency conditions are materially affecting the functioning of the Bureau of Prisons,”
 24 and the Attorney General has so implemented new guidance regarding transitioning suitable
 25 candidates to home confinement. *See* Attorney General Memorandum for Director of BOP,

1 “Increasing Use of Home Confinement at Institutions Most Affected by COVID-19,”
2 <https://www.justice.gov/file/1266661/download> (Apr. 3, 2020); Attorney General
3 Memorandum for Director of BOP, “Prioritization of Home Confinement as Appropriate in
4 Response to COVID-19 Pandemic,” <https://www.justice.gov/file/1262731/download> (Mar. 26,
5 2020) (“AG Memos”).

6 **III. DISCUSSION**

7 Defendant argues that the Court should recommend him transferred to home
8 confinement because of the COVID-19 pandemic. (*See id.* 5:7–9:18). Specifically, Defendant
9 urges this Court to recommend his transfer because Defendant allegedly has a “suitable home
10 confinement plan,” and his incarceration at a BOP facility “poses grave danger to his health and
11 to the health of other inmates and staff.” (*Id.* 6:6–9:18). Defendant, however, does not argue
12 that he is at heightened risk of complications from COVID-19. (*See id.*). He merely contends
13 that, given the high rate of infection within the BOP as compared to the rest of the country, he
14 would not be “safer” in BOP custody than at home. (*Id.* 6:21–8:21).

15 In light of the COVID-19 pandemic, the Attorney General has issued two memoranda to
16 the BOP encouraging the transfer of eligible inmates to home confinement when the inmates
17 are non-violent, pose minimal likelihood of recidivism, and have suitable home confinement
18 plans. *See* AG Memos. However, both memoranda direct the BOP to prioritize transitioning
19 those inmates to home confinement who are most vulnerable to complications from COVID-19.
20 *See id.* The cases cited in Defendant’s brief demonstrate that courts which have considered
21 similar motions have consistently required defendants to show their vulnerability to
22 complications from COVID-19 before recommending home confinement; the prevalence of
23 COVID-19 within the BOP has not been sufficient. (*See* Supp. Mot. 4:20–5:6) (citing *United*
24 *States v. Fobbs*, No. CR 19-00410, 2020 U.S. Dist. LEXIS 70886, 2020 WL 1950769, at *1
25 (N.D. Cal. Apr. 7, 2020) (recommending home confinement “[f]or the reasons stated in the

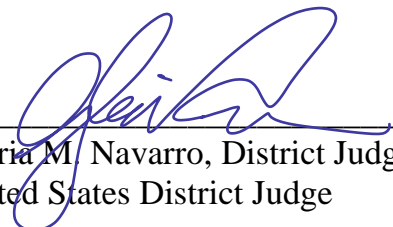
1 record and given defendant's heightened susceptibility to a severe coronavirus infection.");
2 *United States v. Doshi*, No. 13-cr-20349, 2020 U.S. Dist. LEXIS 55572, 2020 WL 1527186
3 (E.D. Mich. Mar. 31, 2020) (granting home confinement to a sixty-four year old man with
4 diabetes and hypertension); *United States v. Powell*, No. 94-cr-00316, ECF No. 95 (D.D.C.
5 Mar. 24, 2020) (granting recommendation to home confinement for a fifty-five year old man
6 "with several respiratory problems (including asthma and sleep apnea)."). Here Defendant has
7 not shown, much less alleged, factors indicating his risk to severe coronavirus complications.
8 Accordingly, the Court denies Defendant's Motion and leaves the determination of whether
9 Defendant should be transferred to home confinement to the discretion of the BOP.

10 **IV. CONCLUSION**

11 **IT IS HEREBY ORDERED** that Defendant's Motions for Recommendation for
12 Transfer to Home Confinement, (ECF Nos. 31, 33), are **DENIED without prejudice**.

13 **DATED** this 8 day of June, 2020.

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Gloria M. Navarro, District Judge
United States District Judge